IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 10206 OF 1998

S. Radhakrishnan .. Petitioner

-Vs-

1. The Commissioner
Corporation of Madras
Ripon Buildings
Chennai 3.

2. The Superintending Engineer
Factory (Motor)
Corporation of Madras
Chennai 3. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. M.Govindaraj

For Respondents : Mr. K.A.Ravindran

:ORDER

1. The petitioner has prayed for the issue of a writ of certiorarified mandamus to call for the records of the 2nd respondent in his proceedings No.E.P.D.,S.C. M.V.S.D1/868/98 dated 26.6.98, quash the same and direct the respondents to alter his date of birth in the service register and, consequentially reinstate the petitioner in service.

2. Notice of motion was ordered on 21.7.98. The respondents have been served and they have also filed their counter. Heard Mr.M. Govindaraj, learned counsel appearing for the petitioner and Mr.K.A. Ravindran, learned counsel appearing for the respondents. With the consent of counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner joined as a motor mechanic during the year 1963 after completion of 7th standard in Corporation School. The petitioner claims that he has produced the school certificate as proof of age at the time of appointment. According to the school certificate, his date of birth being 15.8.1945. The petitioner was always under the impression that his date of

birth is 15.8.1945 and it has been recorded so in his service register. The petitioner also adds that he had no occasion to see his service register and annual attestation in the service register was not made at all as it is not the practice of the respondent Corporation.

4. On 27.4.98, the petitioner was served with a memo to furnish particulars regarding pension benefits, whereupon the petitioner was informed that he has to demit the office on 30.6.98 on superannuation. The petitioner made enquiries and he came to know that his date of birth has been entered as 1.7.1940 in the service register on the basis of medical certificate issued at the time of joining. The petitioner further adds that he has made representation enclosing school certificate, voters' list and other documents seeking for alteration of his date of birth, which was rejected by the respondents by the impugned proceedings dated 26.6.98. Being aggrieved, the present writ petition has been filed.

5. It is contended that the action of the respondents is arbitrary, violative of Article 14 and 16. The respondents should have considered the materials placed in proof of the petitioner's claim of date of birth and their refusal to entertain and pass orders is illegal. The petitioner further claims that he has clinching documents to prove his date of birth and he has been prematurely retired on the basis of a wrong entry. The petitioner further asserts that he has not given the medical certificate nor he has attested the service register at any point of time. It is contended that the action of the 2nd respondent in passing the impugned communication is arbitrary and liable to be quashed.

6. Admittedly, the petitioner demitted office on 30.6.98 and only thereafter on 16.7.1998 the present writ petition has been moved seeking to quash the impugned proceedings and seeking for reinstatement.

7. On behalf of the respondents a counter has been filed by the first respondent. According to the counter, the petitioner joined the Corporation on 1.2.64 as a motor mechanic. At the time of joining he has not produced any certificate in proof of his age, but he produced only medical certificate, where the date of birth is set out 23 years old when he joined the service. Hence the date of birth was entered as 1.7.1940 in the Service Roll, which he has attested. Based upon the said certificate and representation, service Roll and subsequently register was opened and the petitioner has countersigned the same on many occasions. The claim to the contra are false and the petitioner is estopped and at any rate writ petition is not maintainable after superannuation. The petitioner having countersigned the service register and other records has come out with a false case after retirement. The petitioner has not made out any case to sustain his claim that he was born on 15.8.1945. The petitioner has not produced any school certificate at the time of appointment, though it was insisted. Any request for alternation of date of birth should be made within five years from the date of appointment with supporting documents as to proof of age, which the petitioner has failed and just before retirement, the petitioner has made a novel claim. The writ petition is not maintainable. The petitioner has also received all the terminal benefits and pension and there are no merits in the writ petition and

the writ petition is liable to be dismissed.

8. The points that arise for consideration in this writ petition are :-
"i) Whether the impugned proceedings are liable to be quashed ?
ii) Whether the claim of the petitioner for alteration of date of birth after retirement is maintainable and could be entertained ?
Iii) Whether the petitioner has produced any proof as to his date of birth at the time of appointment or he has produced a medical certificate ?
iv) To what relief, if any ?"
All the above points could be considered together.

9. The petitioner claims that his correct date of birth as per the entries in the Corporation School admission register is 15.8.95, while his date of birth has been entered wrongly as 1.7.40.

10. As rightly pointed out by the respondents, the petitioner did not produce any school certificate at the time of appointment, but he has produced a certificate of physical fitness, wherein the petitioner has affixed his thumb impression. The medical certificate is dated 1 3.9.1963. Before the medical officer, the petitioner has declared that he is aged 23 years and the Health Officer has also assessed his age as 23 years by his physical appearance.

11. The service Roll of the petitioner, it was filled up on the date of his entry, where the date of birth has been entered as 1.7.1940. The petitioner has signed the said service Roll and subsequently service register in the presence of the competent authority as early as 7 .1.64. All the particulars found in the service register tallies. The service Roll and register has been signed by the petitioner in token of his accepting the entries made in the service register. Subsequently, the service register was opened as early as 17.7.85, where the date of birth has been entered as 1.7.40 in page 2 of the service register and in page 3 the petitioner has affixed his signature. The petitioner has affixed his signatures in the said service register on several occasions and at no point of time till the date of retirement arrived, the petitioner raised his little finger. Number of signatures of the petitioner find a place in the service register. No school certificate has been produced by the petitioner at the time of his appointment. Therefore, it is incorrect and false on the part of the petitioner to assert that ha has produced the school certificate in proof of his age and that he has never signed the service register. Factually the petitioner has produced the medical certificate only and based on that only the date of birth has been entered as 1.7.40. The petitioner has also signed the service Roll even at the time of preparation of service Roll and latter service Register and he has not at all raised any objection. Normally within a period of five years from the date of joining the service, the petitioner should have sought for alteration of date of birth by producing materials, which the petitioner has miserably failed.

12. Having allowed the entries in the service Roll and service register to become final, it is not open to the petitioner to come before this Court and that too after retirement and seek to quash the communication intimating the date of his retirement. Absolutely there are no merits in the writ petition and the present writ petition is an abuse of process.

13. The legal position in this respect is well settled. In HINDUSTAN LEVER LTD., VS. S.M.JADHAV reported in 2001 (4) SCC 52, where the Apex Court laid down that raising dispute regarding date of birth at the fag end of one's career or after retirement is impermissible. In this case, there is not only inordinate delay, but also laches on the part of the petitioner.

14. If the date of birth as sought to be now suggested by the petitioner is to be accepted, the petitioner might not have been eligible on the date when he was appointed or he might not have gained the prescribed experience eligible for appointment. The appointment of the petitioner has been secured on the basis of the medical certificate furnished by him and he had not produced school certificate, therefore, after retirement it is not open to him to seek for alteration of his date of birth.

15. In this respect, in UNION OF INDIA VS. C.RAMA SWAMY & OTHERS reported in 1997 (4) SCC 647, the Apex Court held thus :-
"25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. ..... In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability."

16. In UNION OF INDIA VS. RAM SUIA SHARMA reported in 1996 (7) SCC 42 1, it was held that the claim for correction of date of birth duly entered in the service records, the appointee will not be permitted to seek for alteration, in that case after 25 years.

17. In STATE OF TAMIL NADU VS. T.V.VENUGOPALAN reported in 1994 (6) SCC 302, it has been held that inordinate delay in making the application for alteration of date of birth is itself a ground for rejecting the request for correction of date of birth of an employee. Having declared his date of birth as entered in the service register is to be correct, the employee would not be permitted at the fag end of his career to raise a dispute as regards the correctness of entries in the service register. Their Lordships of the Supreme Court deprecated such conduct on the part of the employees coming forward at the fag end of their service with a request for alteration of date of birth.

18. On the facts, this Court holds that all the points as discussed above are to be answered against the writ petitioner and following the above pronouncements of the Supreme Court, the writ petition deserves to be dismissed.

19. In the result, this writ petition is dismissed. This is a fit case, where this Court has to award costs, however, taking a lenient view, no cost is awarded as the petitioner is a pensioner.

Index : Yes
Internet : Yes

GLN

To

1. The Commissioner
Corporation of Madras
Ripon Buildings
Chennai 3.

2. The Superintending Engineer
Factory (Motor)
Corporation of Madras
Chennai 3.